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SIPDIS

DEPT FOR EUR/UMB, G/TIP, INL/AEE, AND EUR/ACE
JUSTICE FOR OIA, AFMLS, NDDS AND OPDAT
TREASURY FOR MGAERTNER/NLEE/BCOX

SENSITIVE

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TAGS: [ECON](#) [EFIN](#)

SUBJECT: UKRAINE: PROSECUTOR GENERAL SEES LIMITED ROLE IN
MONEY-LAUNDERING AND TIP ENFORCEMENT

REF: KIEV 340

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¶1. (SBU) Summary. Ambassador recommended to Prosecutor General Oleksandr Medvedko on 3 February that he create administrative divisions devoted to anti-money laundering (AML) and to fighting trafficking in persons (TIP). In both areas, Medvedko deflected blame for the low level of convictions by stressing that the PGO functioned merely as overseer for investigations, which law enforcement agencies actually conducted. Medvedko said he did not see a need for court prosecutors to specialize in these areas. He said the Prosecutor General's Office (PGO) was engaged in the GOU's law enforcement reform discussion and supported designation of a single agency for pretrial investigation, and creation of a specialized agency for investigation and prosecution of crimes committed by high-level government officials. Ambassador asked for fair and transparent treatment in the trial of notorious hacker Dmitriy Golubov as well as in court proceedings in Dniprozhzhynsk against a business partially owned by a U.S. investor. End Summary.

Anti Money Laundering - Poor Court Record Not Our Fault

¶2. (SBU) This was the Ambassador's first formal meeting with Medvedko, who was appointed on November 4 after President Yushchenko had fired previous incumbent Svyatyslav Piskun. (Note: Piskun has won a lawsuit declaring his dismissal illegal, but the GOU filed an appeal that will be heard on February 7.) Medvedko was accompanied by his Oleksandr Shynalsky (Deputy Prosecutor General), Serhiy Kravchuk and Oleksandr Kovalenko (Director and Deputy Director of the International Law Department), and Svitlana Olinyk (Prosecutor in the International Cooperation Section of the International Law Department). Ambassador was accompanied by the U.S. Treasury Advisor on Anti-Money Laundering and Counter-Terrorism Finance, Legal Attaché, Resident Legal Advisor (RLA), Chief of the Law Enforcement Section (LES), and Econoff.

¶3. (SBU) After congratulating Medvedko on the decision by the Financial Action Task Force (FATF) the day before to end active monitoring of Ukraine, Ambassador noted that the Prosecutor General's Office (PGO) had promised to FATF to create an anti-money laundering (AML) division. (Note: although the PGO did establish such a division in 2002, it has since been downgraded to a unit. In January, Deputy Prosecutor General (DPG) Kuornikova reassigned four of the unit's eight remaining staffers, who only focus on oversight of investigations and not on prosecutor's advocacy in the courts. Only at the division level may the PGO oversee local prosecution of cases. Local prosecutors rarely bring cases to trial and let alone get convictions.) Ambassador noted that of 179 cases Ukraine's Financial Monitoring Department (FMD) had prepared and referred to the PGO, only one had been brought to trial. Ukraine boasted some of the best financial manipulators in the world, Ambassador said, and the GOU should bring an end to money-laundering.

¶4. (SBU) Medvedko responded with a review of the development of AML legislation since 2001. He noted that the PGO's role was to oversee implementation of the law, not to investigate money-laundering cases. A presidential decree in 2003 had listed the agencies with investigative responsibility as the Financial Monitoring Department (FMD), the State Tax Administration, Customs, Border Guards, the Ministry of Interior (MOI), and the Security Service. Nonetheless, Medvedko said, the PGO had created an AML analysis unit, though not a division, which, in his view, worked "rather well."

¶5. (SBU) Medvedko said that the various agencies had referred to the PGO around 1000 criminal cases, half of which had been brought to court. (Note: He said nothing about the number of convictions.) He conceded that the proliferation of agencies with some AML jurisdiction made it difficult to determine where responsibility for AML

enforcement responsibility lay. He had discussed this problem with the heads of the law enforcement agencies and with regional prosecutors.

16. (SBU) DPG Shynalski argued that the FMD's job was to identify suspicious transactions and refer information to an appropriate investigative body to determine if the transactions constituted crimes. In this process, the PGO functioned only as a mailbox for the FMD's information. The investigative agencies may have poorly prepared the cases, he said, or more probably the PGO may have concluded they did not involve criminal activity.

17. (SBU) Ambassador reiterated his request for creation of an AML division, underscoring that only the PGO had the authority to take cases to court; i.e., that is where their focus should be. He suggested that the PGO staff meet with Law Enforcement Section Chief and with U.S. Treasury Advisor to discuss ways of improving AML enforcement, including possible training or visits to U.S. agencies. Medvedko responded that, in light of the Ambassador's points, he would consider reorganizing to create a division.

Trafficking in Persons (TIP): Same Story

18. (SBU) Ambassador reminded Medvedko that the State Department had designated Ukraine as a Tier Two TIP Watch List country and warned that if Ukraine slipped to Tier Three, it could lose significant U.S. assistance. To avoid slipping, and perhaps be promoted Tier One, the PGO should create a division dedicated to TIP. Over the last year, the GOU had created Ministry of Interior Department for Combating TIP, harmonized its Criminal Code with TIP provisions of the UN Palermo Convention, and had begun to speak out on destigmatizing TIP victims, but the next step would be to increase the number of successful prosecutions of traffickers. (Reftel)

19. (SBU) Medvedko said in 2005 there had been 302 criminal cases opened on TIP. The PGO, he said, worked closely with the international community -- especially the International Organization on Migration. Members of the PGO had attended eleven TIP conferences in 2005 including events in Israel and Germany, and would soon be attending a meeting in Romania organized by the RLA. As he had when discussing AML, Medvedko stressed that the PGO's role was to oversee investigations conducted by law enforcement agencies. MOI, for example, had a special Department for Combating TIP charged with such investigations.

10. (SBU) Ambassador, once again, told Medvedko it was important to remember that no one but the PGO was responsible for bringing cases to court and thus the PGO needed adequate and expert personnel. Medvedko replied that, in his judgment, his prosecutors were capable of presenting cases in court although they were "generalists" with no specialization in these areas. He noted that in the last year the Cabinet of Ministers had approved the addition of more than 300 new prosecutors.

PGO View of Law Enforcement Reform

11. (SBU) Medvedko confirmed that the PGO had been actively participating in National Security and Defense Council (NSDC) development of a concept for law enforcement reform. There had been five meetings of the Heads of law enforcement agencies, academics, and experts with the NSDC, most recently on January 27. At that meeting a draft concept was adopted that, Medvedko said, included most of the recommendations of the PGO. The next step would be for the NSDC to discuss the paper with the President. The President would then issue a Presidential Resolution. (Note: USG is funding experts to support this process. The goal is an action plan for restructuring the Ukrainian law enforcement community to be compliant with European norms and standards. Final product is to be provided to the President the first week of March. End Note).

12. (SBU) Medvedko said the PGO's office supported the GOU designating a single agency for pretrial investigation, and creation of an independent agency for investigation and prosecution of crimes -- including corruption -- committed by high-level government officials. MOI, he said, opposed making this new agency responsible for investigation, fearing it would be too powerful, but Medvedko thought the same agency should handle cases from start to finish. He added that another PGO suggestion was that there be a review of the division of jurisdictions in the Criminal Procedure Code (CPC). (Note: USG is providing assistance to the GOU to draft a new Council of Europe compliant CPC. End Note)

Legal Cases

¶13. (SBU) Ambassador brought up the case of notorious hacker and internet thief Dmitriy Golubov, noting that Golubov had recently been released on bail. Ambassador said he hoped Golubov would be brought to justice in an honest and fair trial.

¶14. (SBU) Ambassador asked for the PGO's assistance in the case involving U.S. investor Judge Thomas Fitzpatrick of New York (reftel). (Note: Fitzpatrick and his family had purchased a small parking and car wash business in Dniprozherzhynsk, which is operated by his brother-in-law. According to Fitzpatrick, the previous owner tried last year to force the investors to give up the business by getting local officials to harass and threaten the brother-in-law. Now the former owner has filed suit to get the business back via the courts. End Note.) Ambassador said he had met twice in early 2005 with PG Piskun, who managed to end the harassment. Ambassador asked Medvedko to look into the situation, and gave Medvedko a letter he had written on the topic. Medvedko promised to make inquiries and report what he learned.

¶15. (SBU) Comment: Medvedko's apparent goal was to deflect blame for the meager number of convictions of criminals involved in money laundering or TIP. He showed little comprehension of the need for court prosecutors with specialized expertise in these areas, though he did reveal his appreciation of conferences and seminars abroad. Nonetheless, the Ambassador's frank message, as well as LES Chief's discussions after the meeting, may have gotten through, as the PGO called on February 6 to request meetings with the Law Enforcement Section, RLA, and the AML Treasury Advisor on February 7.